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09/866,450	05/25/2001	Jonathan Bye	05222.00118	4118

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EXAMINER

HARBECK, TIMOTHY M

ART UNIT	PAPER NUMBER
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3692

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/22/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/866,450

Applicant(s)

BYE, JONATHAN

Examiner

Timothy M. Harbeck

Art Unit

3692

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/19/2006 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman (US 2001/0039529 A1) in view of Quallan et al (hereinafter Quallan US 2002/0128953 A1).

Re Claim 1: Hoffman discloses a method of managing cost information by a fact based negotiation tool, comprising:

- Transmitting, to a plurality of suppliers, a request for product cost information for a product to be delivered by the one or more suppliers (Paragraph 0004)

- Receiving product cost information from the plurality of suppliers
(Paragraph 0004)
- Electronically storing the product cost information from the plurality of suppliers (paragraph 0022 "download the quote to an internal database.")

Hoffman does not explicitly disclose the steps comprising:

- The product cost information containing a plurality of cost components for providing the product
- Receiving a sales price for the product
- Using the received sales price and the product cost information, calculating a profit margin for sale of the product if supplied by each of the plurality of suppliers
- Displaying the calculated profit margins for sale of the product if supplied by each of the one or more suppliers
- Selecting one component of the plurality of cost components ;
- Comparing a first value of said one component from a first supplier with a second value of the said one component of a second supplier for a plurality of product volumes of the product and
- Negotiating a purchase cost of the product with the first supplier based on the first value and the calculated profit margin for a selected product volume from the plurality of product volumes

Quallan discloses a price discovery and negotiations and related processes wherein buyers provide a demand set comprising a buyer's specification for multiple

Art Unit: 3692

performance elements (0014). Vendors can then submit an offer to supply the demand set, including itemized bids for each bid element (see 0023-0027). The buyer can then compare these prices across multiple vendors and use this a negotiation tactic to obtain lower prices (0028-0030) as well as see price scales across multiple volumes (paragraph 0068 'usage service,' pricing basis based on the rate of consumption of the good or service,' also see 0088 'price per pound of paper). It would have been obvious to a person of ordinary skill in the art to include the teachings of Quallan to the disclosure of Hoffman because the purpose of soliciting quotes for a product is to be able to compare prices across a range of potential suppliers. The ultimate goal of almost any business, especially a retail business, is to maximize total profit by achieving a higher margin on goods sold (sale price minus purchase price). Clearly, Hoffman solicits the quotes from a number of suppliers for the purposes of comparison (paragraph 0004-0005), and it would be obvious to any manager, owner of a business or person of ordinary skill to perform this comparison in light of the potential profit margin of each alternative. Furthermore, by including itemized prices for each element in the demand set a buyer can be assured that not only do they get the best overall price, but through specification can achieve a lower prices for every element in the process and receive a quote for the lowest possible price.

Re Claim 2: Hoffman discloses the claimed method supra and further discloses wherein;

- The request for product cost information is transmitted to each of the plurality of suppliers (paragraph 0004)

- The product cost information is received from each of the plurality of suppliers (paragraph 004)

Hoffman does not explicitly disclose:

- The profit margin for sale of the product is calculated for each of the plurality of suppliers and;
- The displayed profit margins for sale of the product includes the profit margin calculated for each of the plurality of suppliers

However, in a similar argument to the previous rejection of claim 1, the step of calculating a profit margin based upon a number of different alternatives (in this case the cost of goods from individual suppliers), was notoriously well known in the art to anyone of ordinary skill at the time of invention. The purpose of soliciting quotes for a product is to be able to compare prices across a range of potential suppliers. The ultimate goal of almost any business, especially a retail business, is to maximize total profit by achieving a higher margin on goods sold (sale price minus purchase price). Clearly, Hoffman solicits the quotes from a number of suppliers for the purposes of comparison (paragraph 0004), and it would be obvious to any manager, owner of a business or person of ordinary skill to perform this comparison in light of the potential profit margin of each alternative.

Re Claim 3: Hoffman discloses the claimed method supra and further discloses wherein the request for product cost information is transmitted to the plurality of suppliers by electronic mail and the product cost information is received from the one or more suppliers by electronic mail (Paragraph 0021).

Re Claim 4: Hoffman discloses the claimed method supra and while not explicitly disclosing the steps further including obtaining the product cost information from the plurality of suppliers by

- Providing a cost sheet listing cost components of the product to the plurality of suppliers and
- Receiving the cost sheet containing costs for the components from the plurality of supplier

However it would have been obvious to anyone skilled in the ordinary art at the time of invention to include separate components cost requests when sending the request for quotation form disclosed by Hoffman. If the product in question has multiple components, receiving a quote on each separate part would be advantageous in that it would further segment pricing information amongst the suppliers and allow the buyer to potentially achieve an even greater profit margin. For instance, if one supplier provides the lowest price for one component, while a separate supplier provides the lowest cost for a different component, the components could be ordered separately. This would result in a lower overall purchase cost for the buyer and, everything else being equal (sale price) would result in a higher gain.

Re Claim 5: Hoffman discloses the claimed method supra and further discloses the use of electronic mail for the dissemination and collection of pricing information between a buyer and suppliers (paragraph 0021-0022).

Re Claim 6: Hoffman discloses the claimed method supra and further discloses the step of defining the product to be provided by plurality of suppliers (paragraph 0020; buyer has a need for a specific product).

Re Claims 7 and 8: Hoffman discloses the claimed method supra but does not explicitly disclose graphically displaying the cost information from the one or more suppliers; Hoffman does disclose the step of comparing, via a database, the plurality of different quotes received from the suppliers (0022). Furthermore it would have been obvious to anyone skilled in the ordinary art at the time of invention to graphically display the cost information to give the buyer a visual understanding of the different alternatives. It was notoriously well known in the art at the time of invention to graph financial figures for the purposes of comparison, especially utilizing the power of computer databases and spreadsheets in the process.

Re Claim 9: Hoffman discloses a method of managing cost information by a fact based negotiation tool comprising:

- Defining a product to be provided by one or more suppliers (0021)
- Obtaining from the plurality of suppliers cost information for purchase of the product (0022)

Hoffman does not explicitly disclose

- The product cost information containing a plurality of cost components for providing each of said products
- A plurality of products
- Receiving a sale price for each of the products

- Determining a profit margin for sales of each of the products if supplied by the plurality of suppliers and
- Simultaneously displaying for each of the products the determined profit margins
- Selecting one component of the plurality of cost components for one of the plurality of products;
- Comparing a first value of said one component from a first supplier with a second value of the said one component of a second supplier for a plurality of product volumes for said one of the plurality of products and
- Negotiating, for said one of the plurality of products, a purchase cost with the first supplier based on the first value and the calculated profit margins for a selected product volume from the plurality of product volumes

However, the step of defining a plurality of products would have been obvious to anyone skilled in the ordinary art at the time of invention as simply a repetitive step in the Hoffman method. In other words, anyone of ordinary skill could use the Hoffman method to enter a request for quote for a plurality of products simply by replicating the initial process for each of the products. One would be motivated to do this if there is more than one product that the buyer wishes to order or if a complimentary items need to be ordered (matching shirts and ties for instance).

Quallan discloses a price discovery and negotiations and related processes wherein buyers provide a demand set comprising a buyer's specification for multiple performance elements (0014). Vendors can then submit an offer to supply the demand

Art Unit: 3692

set, including itemized bids for each bid element (see 0023-0027). The buyer can then compare these prices across multiple vendors and use this a negotiation tactic to obtain lower prices (0028-0030) as well as multiple volumes as well as see price scales across multiple volumes (paragraph 0068 'usage service,' pricing basis based on the rate of consumption of the good or service,' also see 0088 'price per pound of paper). It would have been obvious to a person of ordinary skill in the art to include the teachings of Quallan to the disclosure of Hoffman because the purpose of soliciting quotes for a product is to be able to compare prices across a range of potential suppliers. The ultimate goal of almost any business, especially a retail business, is to maximize total profit by achieving a higher margin on goods sold (sale price minus purchase price). Clearly, Hoffman solicits the quotes from a number of suppliers for the purposes of comparison (paragraph 0004-0005), and it would be obvious to any manager, owner of a business or person of ordinary skill to perform this comparison in light of the potential profit margin of each alternative. Furthermore, by including itemized prices for each element in the demand set a buyer can be assured that not only do they get the best overall price, but through specification can achieve a lower prices for every element in the process and receive a quote for the lowest possible price.

Re Claims 10: Hoffman discloses the claimed method supra and further discloses wherein

- The cost information for purchase of each product is obtained from each of the plurality of suppliers associated with the product (0004)

Hoffman again does not explicitly disclose the determination and display of profit margin for each product however, in a similar argument to claims 1, 2 and 9 above, this step would be obvious to anyone skilled in the ordinary art at the time of invention as it was a notoriously well known step in the business community.

Re Claim 11: Hoffman discloses the claimed method supra and further discloses wherein the request for product cost information for each product is transmitted to the one or more suppliers by electronic mail and the product cost information is received for each product from the one or more suppliers by electronic mail (Paragraph 0021).

Re Claim 12: Hoffman discloses the claimed method supra and while not explicitly disclosing the steps further including obtaining the product cost information from the one or more suppliers by

- Preparing a cost sheet for each product listing cost components of the product to the one or more suppliers and
- Providing the cost sheets to each of the plurality of suppliers to be completed with the cost information.

However it would have been obvious to anyone skilled in the ordinary art at the time of invention to include separate components cost requests when sending the request for quotation form disclosed by Hoffman. If the products in question have multiple components, receiving a quote on each separate part would be advantageous in that it would further segment pricing information amongst the suppliers and allow the buyer to potentially achieve an even greater profit margin. For instance, if one supplier

provides the lowest price for one component, while a separate supplier provides the lowest cost for a different component, the components could be ordered separately. This would result in a lower overall purchase cost for the buyer and, everything else being equal (sale price) would result in a higher gain.

Re Claim 13: Hoffman discloses the claimed method supra and while not explicitly disclosing wherein the cost sheet for one of the products includes different cost components than the cost sheet for another of the products, this would have been obvious to anyone skilled in the ordinary art at the time of invention because different products have different components and therefore different cost components. For instance a car would have different cost components (engine, tires, frame, ect) than would a computer (monitor, hard drive, CPU, printer ect).

Re Claim 14: Hoffman discloses the claimed method supra and further discloses the step including preparing the cost sheet in an electronic format and providing the cost sheet to the one or more suppliers by email (paragraph 0020-0022)

Re Claim 15: Hoffman discloses a method of managing cost information by a fact based negotiation tool comprising

- Defining a product for purchase, the product being associated with plurality of suppliers that may provide the product (0004)
- Obtaining cost information for purchase of the product from the plurality of suppliers associated with the product (0004)
- Electronically storing the cost information of the product obtained from the plurality of suppliers associated with the product and (0022)

- Displaying the cost information of the product (0022)

Hoffman does not explicitly disclose

- Selecting one component of the plurality of cost components for one of the plurality of products;
- Comparing a first value of said one component from a first supplier with a second value of the said one component of a second supplier for a plurality of product volumes for said one of the plurality of products and
- Negotiating, for said one of the plurality of products, a purchase cost of the product with the first supplier based on the first value and the calculated profit margin for a selected product volume from the plurality of product volumes

Quallan discloses a price discovery and negotiations and related processes wherein buyers provide a demand set comprising a buyer's specification for multiple performance elements (0014). Vendors can then submit an offer to supply the demand set, including itemized bids for each bid element (see 0023-0027). The buyer can then compare these prices across multiple vendors (0028-0030) as well as multiple volumes as well as see price scales across multiple volumes (paragraph 0068 'usage service,' pricing basis based on the rate of consumption of the good or service,' also see 0088 'price per pound of paper) and use this a negotiation tactic to obtain lower prices. It would have been obvious to a person of ordinary skill in the art to include the teachings of Quallan to the disclosure of Hoffman because the purpose of soliciting quotes for a product is to be able to compare prices across a range of potential suppliers. The

Art Unit: 3692

ultimate goal of almost any business, especially a retail business, is to maximize total profit by achieving a higher margin on goods sold (sale price minus purchase price). Clearly, Hoffman solicits the quotes from a number of suppliers for the purposes of comparison (paragraph 0004-0005), and it would be obvious to any manager, owner of a business or person of ordinary skill to perform this comparison in light of the potential profit margin of each alternative. Furthermore, by including itemized prices for each element in the demand set a buyer can be assured that not only do they get the best overall price, but through specification can achieve a lower prices for every element in the process and receive a quote for the lowest possible price.

Hoffman does not explicitly disclose wherein a plurality of products are defined, however, this would have been obvious to anyone skilled in the ordinary art at the time of invention as simply a repetitive step in the Hoffman method. In other words, anyone of ordinary skill could use the Hoffman method to enter a request for quote for a plurality of products simply by replicating the initial process for each of the products. One would be motivated to do this if there is more than one product that the buyer wishes to order or if a complimentary items need to be ordered (matching shirts and ties for instance).

Re Claim 16: Hoffman discloses the claimed method supra and while not explicitly disclosing graphically displaying the cost information for each product, Hoffman does disclose the step of comparing, via a database, the plurality of different quotes received from the suppliers (0022). Furthermore it would have been obvious to anyone skilled in the ordinary art at the time of invention to graphically display the cost information to give the buyer a visual understanding of the different alternatives. It was

Art Unit: 3692

notoriously well known in the art at the time of invention to graph financial figures for the purposes of comparison, especially utilizing the power of computer databases and spreadsheets in the process.

Re Claim 17: Hoffman discloses the claimed method supra and further discloses wherein

- The cost information for at least one product is obtained from each of the plurality of suppliers associated with the at least one product (0004)
- The simultaneously displayed cost information includes cost information for the at least one product and each supplier associated with the at least one product (0004)

Re Claim 18: Hoffman discloses the claimed method supra and while not explicitly disclosing wherein the cost information for the at least one product is graphically displayed; Hoffman does disclose the step of comparing, via a database, the plurality of different quotes received from the suppliers (0022). Furthermore it would have been obvious to anyone skilled in the ordinary art at the time of invention to graphically display the cost information to give the buyer a visual understanding of the different alternatives. It was notoriously well known in the art at the time of invention to graph financial figures for the purposes of comparison, especially utilizing the power of computer databases and spreadsheets in the process.

Re Claim 19: Hoffman discloses the claimed method supra and further discloses requesting and receiving the cost information from the plurality of suppliers by email (0006 and 0022).

Re Claim 20: Hoffman discloses the claimed method supra and while not explicitly disclosing the steps further including obtaining the product cost information from the one or more suppliers by

- Preparing a cost sheet for each product listing cost components of the product to the plurality of suppliers and
- Providing the cost sheets to each of the plurality of suppliers to be completed with the cost information.

However it would have been obvious to anyone skilled in the ordinary art at the time of invention to include separate components cost requests when sending the request for quotation form disclosed by Hoffman. If the products in question have multiple components, receiving a quote on each separate part would be advantageous in that it would further segment pricing information amongst the suppliers and allow the buyer to potentially achieve an even greater profit margin. For instance, if one supplier provides the lowest price for one component, while a separate supplier provides the lowest cost for a different component, the components could be ordered separately. This would result in a lower overall purchase cost for the buyer and, everything else being equal (sale price) would result in a higher gain.

Re Claim 21: Hoffman discloses the claimed method supra and while not explicitly disclosing wherein the cost sheet for one of the products includes different cost components than the cost sheet for another of the products, this would have been obvious to anyone skilled in the ordinary art at the time of invention because different products have different components and therefore different cost components. For

instance a car would have different cost components (engine, tires, frame, ect) than would a computer (monitor, hard drive, CPU, printer ect).

Re Claim 22: Hoffman discloses the claimed method supra and further discloses the step including preparing the cost sheet in an electronic format and providing the cost sheet to the plurality of suppliers by email (paragraph 0020-0022)

Re Claims 23-28: Further fact based negotiation tool (apparatus) claims would have been obvious to perform the steps recited in the previously rejected method claims 1-22 and are therefore rejected using the same art and rationale.

Re Claims 29-36: Further computer readable medium claims would have been obvious in order to implement the previously rejected method claims 1-8, respectively, and are therefore rejected using the same art and rationale.

Response to Arguments

Applicant's arguments filed 12/19/2006 have been fully considered but they are not persuasive.

The applicant has argued that Quallan fails to suggest or consider pricing elements with regards to the purchase volumes. The examiner disagrees with this assessment as Quallan discloses pricing methods for vendors based on volume (0068 'pricing based on rate of consumption,' and 0088 'price per pounds of paper.'). While this might be a linear scale, the claimed limitation of 'a plurality of product volumes of the product,' is available in Quallan, and thus meets the claim.

The applicant further argues that Quallan fails to suggest the feature of 'selecting a component of the plurality of cost components. However, Quallan discloses the use

of 'Customer Assembled Components (0072) wherein 'the price of the finished good or service is built up, or assembled, from the price of the underlying manufacturing process or components required to make the good or service.' The applicant contends that since Quallan teaches that negotiations can be conducted for every element of the Target Rate list and that this somehow teaches away from the selection of one element. However, on the contrary, Quallan discloses that 'second round of bids is optional, (0078) and furthermore that every element need not necessarily be selected (paragraph 0081 'the secondary round of bids may lead to a contract for all or some of the bid elements of buckets or an agreement to agree as to how pricing will be determined for future work conducted by a vendor or vendors on behalf of the buyer over a finite period.'). The examiner's motivation statement is implying that a user of the combined system could select each component in the demand set separately, and therefore achieves a low cost for all components. However the user of the combined system is also free to negotiate contracts for some (i.e one or more) of the elements, not all.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this instance the examiner maintains that a person of ordinary skill in the art

Art Unit: 3692

would have found the motivation to 'component shop' utilizing the present systems, in circumstances where this was appropriate. While the purchasing of a car does not necessarily fit this profile (although certainly people buy separate components such as tires, stereos, air filters ect from separate vendors), it would for other goods or services such as for example, home renovations (separate contracts for building, plumbing, electrical). In the examiner's opinion that this is nothing more than comparison shopping, which he finds to be obvious to a person of ordinary skill.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Harbeck whose telephone number is 571-272-8123. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3692

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